

Department of State

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EYES ONLY

FOR STEVENSON & MCCLOY : New York Negotiations

We have carefully reviewed the record of your last two conversations with Kuznetsov (urtels 2106 and 2086) and the Cuban draft

declaration (urtel 2104). You are commended for particularly effective ~~ripostes~~ ^{expeditious} to Soviet complaints about our draft declaration and for response which you made regarding Cuban draft.

We find little new in Kuznetsov's attitude toward our draft.

We do find Soviet position anomalous, to say the least, in complaining about lack of evidence of US intention to ~~expeditiously~~ ^{expeditiously} wind up of crisis when they still procrastinating in presenting us with draft declaration of their own. Department fully concurs in your judgment that we should not seek any further meetings with Soviets on this subject until they have draft to give us. From our viewpoint there can be no advantage in pursuing question further, with Soviets continually nibbling away at our declaration until they present concrete counter of their own.

We can only interpret presentation Cuban draft as setback to efforts to ~~close out this episode quickly and satisfactorily~~. It consists merely of ~~regurgitation~~ of standard Cuban position as contained in USSR/Cuban QIE protocol, UNOTE and various Cuban statements. It is totally unacceptable, and we do not propose treat it as negotiating

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By ics, NARS, Date 1-29-85

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document. Unless and until Cuba is prepared to accept the terms of the agreement contained in Kennedy-Khrushchev exchange of October 27 (which now seems practically impossible), we are not interested in having a Cuban declaration put before the Council which the Council would be asked to note. We have assumed that probably Cubans would make a speech to the Council members but we have not entertained idea and do not propose to do so — of embarking on course of tripartite negotiations where we would be asked to seek least common denominator with Cuba and the USSR. Accordingly, in any conversations on this subject, you should dismiss Cuban draft out of hand as not being germane to our efforts to get satisfactory settlement with USSR.

Latest conversations and injection of Cuban draft confirms that we are now reaching point where we must choose between two major options open to us for winding up the problem:

1. Continued efforts to get parallel declarations put before Security Council, where minimum stated position of each side is tolerable to the other.
2. Wind up problem by issuing unilateral government statements delineating respective positions.

First course appears increasingly more difficult, less desirable, and less likely of attainment. We do not intend to confine express of our position before the Security Council to a watered-down version which fails to cover basic ingredients such as our determination to continue surveillance of Cuba as long as necessary in the absence of acceptable international verification system. We fully recognise, of course, that it will be exceedingly difficult for the Soviets to realize SC consensus which notes such a declaration. At same time, USSR seems to set considerable

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stere by having formal wind-up of affair before Security Council with full Council endorsement. ~~TOP SECRET~~

It ~~TOP SECRET~~ will be up to USSR to determine whether or not it wishes to pursue this course in knowledge that we can not go beyond (a) present draft declaration, with possibly minor modifications, or (b) actual text of President's Nov. 20 press conference statement.

Of course, we will study Soviet draft when received, and it is premature at this point to decide in absence such text whether continue negotiations for agreed Council presentation or to saw off such negotiations and conclude affair with uni-

(We could use ~~TOP SECRET~~ President's Nov. 20 statement.) However, if Soviet draft does not, in your judgment, reflect serious effort to reach accommodation with us, believe you should weight conversation heavily in favor of abandoning Security Council approach.

For possible rebuttal to Soviets in your next negotiating session, following as requested telephonically is detailed argumentation regarding reference to Rio Pact in our declaration.

1. President's offer of Oct. 27 QIE to give assurances against an invasion of Cuba ~~TOP SECRET~~ was not to be understood as isolated from and unrelated to all existing arrangements for international security. Offer was to forsake invasion as a policy choice for United States, and did not comprise undertaking to use no armed forces against Cuba regardless of circumstances. Conduct of Cuba in pursuing or refraining from aggression would clearly affect actions of US and other American Republics under United Nations Charter and Rio Pact. If situation remained unchanged after removal of offensive weapons from Cuba, and if Cuba did not undertake new aggressive

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activities, US would not proceed to invade Cuba. However, if Cuba undertook new acts of aggression, US and other American Republics could not be expected to be bound by no-invasion assurances when Cuba itself was engaged in fresh violations of its international obligations.

2. Cuba has refused on-site verification to assure that offensive weapons are removed and to safeguard against any reintroduction of such weapons. As a result, US-Soviet commitments of October 27 and 28 have not been and will not be fully carried out. In light of these facts, and considering questions which Cuban actions raise as to intentions and reliability of Castro regime in relation to Western Hemisphere security, it is clearly ~~UNQUOTE~~ for the United States, in expressing its assurances against invasion to place these in their proper context which includes both United Nations Charter and Rio Pact.

3. Cuba has prevented full implementation of US-Soviet commitments. United States in its draft declaration has included an additional element of assurance which was not contained in commitments of October 27 and 28. US draft declaration states that United States does not intend ~~UNQUOTE~~ to invade Cuba or support an invasion of Cuba. ~~UNQUOTE~~ Particularly with addition of this further assurance, Cuba can reasonably object to assurances against invasion being placed in the context of the two treaties.

4. No objection has been made to mention of United Nations Charter in the declaration. Any declaration which did not also contain mention of the Charter would be clearly incomplete. Rio Pact is basic security treaty applicable to Western Hemisphere. Regional arrangement constituted by American Republics is based on recognition in Chapter VIII of United Nations Charter, and Article 36, Article 37 of Charter shows that Inter-American System was foremost in connection with

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Francisco when Charter provisions on regional arrangements were being drafted and negotiated.

5. Point can be made with Latin Americans that it is important to continue to deal with problem of Cuba within framework of Inter-American System. Having this in mind, we would not want to make formal declaration which appeared to pass over and perhaps by implication exclude continued functioning of Inter-American machinery with respect to problems of peace and security in the Americas caused by Castro regime.

6. Kuznetsov has claimed that Rio Pact violates United Nations Charter. United States ~~JOINTS~~ ~~JOINTS~~ believes the two instruments are entirely consistent. Compatibility of Inter-American collective security arrangements with United Nations Charter was considered and affirmed at San Francisco Conference. Discussion of this is contained at pages 6 and 7 of Department of State legal memorandum entitled Q12 Legal Basis for the Quarantine of Cuba. ~~UNIQUE~~

7. Kuznetsov has specifically claimed that Rio Pact authorizes an armed response which is not in accord with Article 51 of UN Charter. Article 51, however, does not lay down any prohibitions or restrictions, but states affirmatively one situation in which armed force may be used by individual States under the United Nations Charter. Article 51 does not purport to rule out use of force in all other cases.

8. Kuznetsov further criticizes Rio Pact as authorizing use of force without approval of Security Council under Article 53. This subject is also dealt with in State Department legal memorandum, at pages 9-12. Believe this material could be provided Soviets or any others raising point.

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9. Omission of all mention of Rio Pact from formal US declaration would lend itself to contention that assurances against invasion were to be considered absolute and without any relationship to ~~minimum~~ relevant regional security arrangements. We would not want to provide any ground for such a contention. So far as effectiveness of the Pact is concerned, United States could not alter or impair its provisions for coverage without formal amendment of Pact through treaty process.

END

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Department of State

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EYES ONLY

FOR STEVENSON & MCCLOY : New York Negotiations

We have carefully reviewed the record of your last two conversations [redacted] and the Cuban draft

declaration (urtel 2104). You are commended for particularly effective ripostes

xxmxx to Soviet complaints about our draft declaration and for response which you made regarding Cuban draft.

We find little new in [redacted] attitude toward our draft.

We do find Soviet position anomalous, to say the least, in complaining xxmxx expedite about lack of evidence of US intention toxxmxx wind up of crisis

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not seek any further meetings with Soviets on this subject until they have draft to give us. From our viewpoint there can be no advantage

in pursuing question further, with Soviets continually nibbling away at our declaration until they present concrete counter of their own.

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It is totally unacceptable, and we do not propose treat it as negotiating

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MARS DATE 9/12/76
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document. Unless and until Cuba is prepared to accept the terms of the agreement contained in Kennedy-Khrushchev exchange of October 27 (which now seems practically impossible), we are not interested in having a Cuban declaration put before the Council which the Council would be asked to note. We have assumed that probably Cubans would make a speech to the Council members but we have not entertained idea and do not propose to do so — of embarking on course of tripartite negotiations where we would be asked to seek least common denominator with Cuba and the USSR. Accordingly, in any conversations on this subject, you should dismiss Cuban draft out of hand as not being germane to our efforts to get satisfactory settlement with USSR.

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store by having formal wind-up of affair before Security Council with full Council endorsement. ~~XXXXXX~~

It ~~XXXXXX~~ will be up to USSR to determine whether or not it wishes to pursue this course in knowledge that we can not go beyond (a) present draft declaration, with possibly minor modifications, or (b) actual text of President's Nov. 20 press conference statement.

Of course, we will study Soviet draft when received, and it is premature at this point to decide in absence such text whether continue negotiations for agreed Council presentation or to saw off such negotiations and conclude affair with unilateral statements. ~~XXXXXX~~ (We could use President's Nov. 20 statement.) However, if Soviet draft does not, in your judgment, reflect serious effort to reach accommodation with us, believe you should weight conversation heavily in favor of abandoning Security Council approach.

For possible rebuttal to Soviets in your next negotiating session, following as requested telephonically is detailed argumentation regarding reference to Rio Pact in our declaration.

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activities, US would not proceed to invade Cuba. However, if Cuba undertook new acts of aggression, US and other American Republics could not be expected to be bound by no-invasion assurances when Cuba itself was engaged in fresh violations of its international obligations.

2. Cuba has refused on-site verification to assure that offensive weapons are removed and to safeguard against any reintroduction of such weapons. As a result, US-Soviet commitments of October 27 and 28 have not been and will not be fully carried out. In light of these facts, and considering questions which Cuban refusals raise as to intentions and reliability of Castro regime in relation to Western Hemisphere security, it is clearly ~~unwise~~ for the United States, in expressing its assurances against invasion to place these in their proper context, which includes both United Nations Charter and Rio Pact.

3. Cuba has prevented full implementation of US-Soviet commitments. United States in its draft declaration has included an additional element of assurance which was not contained in commitments of October 27 and 28: US draft declaration states that United States does not intend QTE to invade Cuba or support an invasion of Cuba. UNQTE. Particularly with addition of this further assurance, Cuba cannot reasonably object to assurances against invasion being placed in context of existing treaties.

4. No objection has been made to mention of United Nations Charter in US declaration. Any declaration which did not also contain mention of Pact would be clearly incomplete. Rio Pact is basic security treaty applicable to the Western Hemisphere. Regional arrangement constituted by American Republic is given clear recognition in Chapter VIII of United Nations Charter, and drafting history of Charter shows that Inter-American System was foremost in contemplation at San

Francisco when Charter provisions on regional arrangements were being drafted and negotiated.

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END